

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 514 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed
to see the judgements ? NO

2. To be referred to the Reporter or not ? NO

3. Whether Their Lordships wish to see the fair copy
of the judgement? NO

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder ? NO

5. Whether it is to be circulated to the Civil Judge?
NO

MOTIBHAI LIMBACHIA

Versus

GOPALDAS V LOTANI

Appearance:

MR MC SHAH for Petitioner

MR HM PARIKH for Respondent No. 1

MR KP Raval APP for Respondent No. 3

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 04/11/96

ORAL JUDGEMENT

The Appellant {Original Complainant} has filed the present appeal challenging the judgment and order dated 27-1-1988, passed by the learned Chief Judicial Magistrate, Navsari in Criminal Case No. 2482 of 1984, acquitting the respondents-accused for the alleged offences under Section 7 (1) read with Section 16 of the

Prevention of Food Adulteration Act. It is stated that since the Respondent No. 1 has expired, after the present petitioner was admitted, the appeal is abated as far as the respondent No. 1 is concerned.

2. The appellant at the relevant time was serving as a Food Inspector of the Navsari Nagarpalika. He visited the shop of the respondents who were having a grocery shop in the name of Shivshankar Pipermint Store on 20/12/1983 and collected the samples of pipermint and purchased the article of pipermint, and after following the due procedure required under the Food Adulteration Rules sent one of the sample to the public analyst for analysis. After obtaining the report that the same was not in conformity with the standard and provisions as laid down under the Rules, the Food Inspector filed a complaint in the Court of learned Chief Judicial Magistrate at Navsari. The learned Magistrate who tried the case against the respondents, at the end of trial, came to the conclusion that the charge is not duly established as the complainant has committed breach of certain mandatory requirements of the rules. He therefore acquitted the respondents. One of the breaches found by the learned Magistrate is to the effect that complainant has not followed Rule 17 and 18 of the Rules. Rule 17 of the Rules deals with manner of despatch of the container of sample for analysis, while Rule 18 deals with memorandum and impression of seal to be sent separately and provides that a copy of the memorandum and specimen impression of the seal used to seal the packet shall be sent to the Public Analyst separately by registered post or delivered to him or to any person authorised by him.

3. The learned Magistrate was of the view that in the instant case, complainant has not sent a copy of memorandum as well as the seal separately, and therefore, breach of Rule 18, which is mandatory in nature, is committed. This Court in Mohanlal Maganlal Sindhi & Ors. versus State of Gujarat & Ors., 18 GLR p-1002 has ruled that rule 18 is mandatory. In view of this, I am of the opinion that the reasons for according acquittal on the ground that the requirement of Rule 18 has not been followed, is just and proper. One more ground for acquittal is recorded by the learned Magistrate is to the effect that in the instant case, the complainant instead of drawing panchnama of the procedure to be folowed, by collecting the sample has in fact filled gaps of the printed panchnama, and therefore, the evidence of complainant as well as the panch creates doubt about the manner in which the sample was collected. In my view,

the procedure adopted by the complainant in preparing panchnama, which is doubtful and as it goes to the root of the case, the learned Magistrate was not justified in acquitting the accused. I have also gone through the other reasons for acquittal recorded by the learned Magistrate. Suffice it to say that I am in total agreement with the same. There being no substance in the appeal, the same is dismissed.

Prakash*